ACS EDI GATEWAY
TRADING PARTNER AND BUSINESS ASSOCIATE AGREEMENT

THIS TRADING PARTNER AND BUSINESS ASSOCIATE AGREEMENT ("Agreement") is by and between **SUBMITTER ("SUBMITTER")** and **ACS EDI GATEWAY, INC.** ("Business Associate"), collectively "the Parties."

Whereas, Submitter desires to transmit Transactions to Business Associate for the purpose of submitting data to a Health Plan; and

Whereas, Business Associate desires to receive such Transactions for this purpose recognizing that Business Associate performs such services on behalf of the Health Plan; and

Whereas, Submitter is subject to the Privacy Standards and the Transaction and Code Set Regulations with respect to the transmission of such Transactions.

Now, therefore, the Parties agree as follows:

1. Definitions

Business Associate means ACS EDI Gateway, Inc.

Submitter means the party identified as "Submitter" on the signature line of this Agreement who is a Health Care Provider, Health Plan or Healthcare Clearinghouse, all as defined in the Privacy Standards.

Designated Record Set is defined in 45 CFR 164.501.

Privacy Standards means the Standards for Privacy of PHI issued by DHHS under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and published at 45 CFR Parts 160 and 164, Subparts A and E.

Protected Health Information, or "PHI," is the patient health information defined in 45 CFR 164.501 to the extent that such information is created or received by Business Associate from or on behalf of Submitter.

Secretary means the Secretary of the Department of Health and Human Services (DHHS) or his/her designee.

Standard is defined in 45 CFR 160.103.

Transaction is defined in 45 CFR 160.103.

Transactions and Code Set Regulations means those regulations governing the transmission of certain data transactions as published by DHHS under HIPAA.

2. Obligations of the Business Associate, Effective Upon Execution of this Agreement or April 14, 2003, Whichever is Later:

(1) Not use, disclose, or process PHI other than as permitted by this Agreement.

(2) Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted under this Agreement.

(3) Promptly notify Submitter of any use or disclosure contrary to the terms of this Agreement of which Business Associate becomes aware.

(4) Ensure that any agent, including a subcontractor, to whom it provides PHI received from or created by Business Associate on behalf of Submitter agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to PHI.

(5) To the extent PHI is maintained by the Business Associate and is not duplicative of PHI in the possession of the Covered Entity, Business Associate will provide reasonable access to Submitter to PHI maintained by Business Associate in a Designated Record Set in order for Submitter to meet the requirements of 45 CFR 164.524. Business Associate may charge a reasonable fee for such access.

(6) To the extent PHI is maintained by the Business Associate and is not duplicative of PHI in the possession of the Covered Entity, Business Associate will amend PHI maintained by Business Associate in a Designated Record Set, at Submitter's reasonable request, in order for Submitter to meet the requirements of 45 CFR 164.526.

(7) Document its disclosures of PHI and related information and provide Submitter with such

information in order for Submitter to meet the requirements of 45 CFR 164.528. If Submitter directs Business Associate to make a disclosure that requires an accounting by Business Associate, Submitter shall specifically notify Business Associate that such disclosure requires an accounting. Failure of Submitter to notify Business Associate shall relieve Business Associate of the requirement to account for such disclosure. Business Associate may charge a reasonable fee for any accounting provided by Business Associate.

(8) Make internal practices, books, and records relating to the use and disclosure of PHI reasonably available to the Secretary, with prior notice and during normal business hours, for the purpose of the Secretary determining Submitter's compliance with the Privacy Standards.

(9) Business Associate shall be permitted to use and disclose PHI for its proper management and administration and to carry out its legal responsibilities. In connection with such uses and disclosures of PHI, Business Associate may disclose PHI to third parties as required by law and otherwise to the extent that the person receiving the PHI agrees to hold the PHI confidentially, to use or further disclose the PHI only as required by law or for the purpose for which it was disclosed to such person, and to notify Business Associate of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

3. **Obligations of the Parties Effective Upon Execution of this Agreement by Submitter**

A. The Parties agree, in regard to any electronic Transactions between them:

(1) They will exchange data electronically using only those Transaction types as selected by Submitter on the ACS EDI Gateway Trading Partner Enrollment Form (TPEF).

(2) They will exchange data electronically using only those formats (versions) as specified on the TPEF.

(3) They will not change any definition, data condition, or use of a data element or segment in a Standard Transaction they exchange electronically.

(4) They will not add any data elements or segments to the Maximum Defined Data Set.

(5) They will not use any code or data elements that are not in or are marked as "Not Used" in a Standard's implementation specification.

(6) They will not change the meaning or intent of a Standard's implementation specification.

(7) Business Associate may reject a Transaction submitted by Submitter if the Transaction is not submitted using the data elements, formats or Transaction types set forth in the TPEF. Business Associate may refuse to accept any claims from Submitter if Submitter repeatedly submits Transactions which do not meet the criteria set forth in TPEF or if Submitter repeatedly submits inaccurate or incomplete Transactions to Business Associate.

B. Submitter understands that Business Associate or others may request an exception from the Transaction and Code Set Regulations from DHHS. If an exception is granted, Submitter will participate fully with Business Associate in the testing, verification, and implementation of a modification to a Transaction affected by the change.

C. Business Associate understands that DHHS may modify the Transaction and Code Set Regulations. Business Associate will modify, test, verify, and implement all modifications or changes required by DHHS using a schedule mutually agreed upon by Submitter and Business Associate.

D. Neither Submitter nor Business Associate accepts responsibility for technical or operational difficulties that arise out of third party service provider's business obligations and requirements that undermine Transaction exchange between Submitter and Business Associate.

E. Submitter and Business Associate will exercise diligence in protection of the identity, content, and improper access of business documents exchanged between the two parties. Submitter and Business Associate will make reasonable efforts to protect the safety and security of

individually assigned identification numbers that are contained in transmitted business documents and used to authenticate relationships between the parties.

F. Business Associate may publish data clarifications ("ACS Companion Guides") to complement each Implementation Guide. Submitter should use ACS Companion Guides in conjunction with the HIPAA Implementation Guides available at http://www.wpc-edi.com/hipaa/HIPAA_40.asp.

G. Transactions are considered properly received only after accessibility is established at the designated machine of the receiving party. Once transmissions are properly received, the receiving party will promptly transmit an electronic acknowledgment that conclusively constitutes evidence of properly received transactions. Each party will subject information to a virus check before transmission to the other party.

H. Each party will implement and maintain appropriate policies and procedures and mechanisms to protect the confidentiality and security of PHI transmitted between the parties.

4. Term and Termination

A. This Agreement is effective on the dates specified in Section 5.H. below, except that the obligations of the parties under section 2 shall not commence until the later of the Agreement effective date or April 14, 2003. This Agreement shall continue until such time as either party elects to give written notice of termination to the other party or termination of Transaction services provided by Business Associate to Submitter, whichever is earlier.

B. Upon Submitter's knowledge of a material breach of this Agreement by Business Associate, Submitter will:

(1) Provide an opportunity for Business Associate to cure the breach or end the violation within the time frame specified by the Submitter which shall be no less than 30 days or such longer time as may be necessary with reasonable diligence to cure the breach, or, if Business Associate does not do so, terminate this Agreement;

(2) Immediately terminate this Agreement if Business Associate breached a material term of this Agreement and cure is not possible; or

(3) If neither termination nor cure is feasible, Submitter shall report the violation to the Secretary.

C. Effect of Termination.

Upon termination of this Agreement, Business Associate shall store and continue to protect the confidentiality of PHI.

5. Miscellaneous

A. This Agreement incorporates, by reference, any written agreements between the parties relating to the subject matter hereof.

B. This Agreement shall be interpreted consistently with all applicable federal and state privacy laws. In the event of a conflict between applicable laws, the more stringent law shall be applied. This Agreement and all disputes arising from or relating in any way to the subject matter of this Agreement shall be governed by and construed in accordance with Florida law, exclusive of conflicts of law principles. THE EXCLUSIVE JURISDICTION FOR ANY LEGAL PROCEEDING REGARDING THIS AGREEMENT SHALL BE IN THE COURTS OF THE STATE OF FLORIDA AND THE PARTIES HEREBY EXPRESSLY SUBMIT TO SUCH JURISDICTION.

C. Unless otherwise prohibited by statute, the parties agree that this Agreement shall not be affected by any state's enactment or adoption of the Uniform Computer Information Transaction Act, Electronic Signature or any other similar state or federal law. Each party agrees to comply with all other applicable state and federal laws in carrying out its responsibilities under this Agreement.

D. This Agreement is entered into solely between, and may be enforced only by, Submitter and Business Associate. This Agreement shall not be deemed to create any rights in third parties or to create any obligations of Submitter or Business Associate to any third party.

E. NO WARRANTIES, EXPRESS OR IMPLIED, ARE PROVIDED BY BUSINESS ASSOCIATE UNDER THIS AGREEMENT. BUSINESS ASSOCIATE'S MAXIMUM AGGREGATE LIABILITY FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE MANNER IN WHICH CLAIMED OR THE FORM OF ACTION ALLEGED, IS LIMITED TO THE AMOUNT(S) PAID TO BUSINESS ASSOCIATE BY SUBMITTER UNDER THIS AGREEMENT.

F. Business Associate may provide proprietary software to Submitter to allow Submitter to submit Transactions to Business Associate. Submitter will protect the software as it protects its own confidential information and will not, directly or indirectly, allow access to or the use of the software or any portion thereof, on any computer, server, or network, by any person, corporation, or business entity other than Submitter. Submitter may permit use of the software by contractors or agents of Submitter provided that any such contractors or agents are not competitors of Business Associate and further provided that any such persons agree to protect the confidentiality of the software. Submitter and its contractors and agents are not permitted to use the software for any purpose other than submitting Transactions solely to Business Associate.

G. This Agreement contains the entire agreement between the parties and may only be modified by an agreement signed by both parties.

H. Submitter may elect to execute either a hard copy or an electronic copy of this Agreement. Hard Copy Execution: Submitter will sign a hard copy of this Agreement and mail to Business Associate at the address indicated below. Business Associate will return a copy of the fully executed Agreement to Submitter. The effective date of the hard copy Agreement is the date on which the Agreement is signed by Business Associate. Electronic Copy Execution: Submitter should execute this Agreement by clicking on the "I AGREE" button that appears at the bottom of the Agreement. The effective date of the electronic copy agreement is the date Business Associate receives the electronic transmission of Submitter's acceptance to the terms of this Agreement.

EDI SUBMITTER:

_____
Provider Number/ EDI Gateway Trading Partner ID

(For Pharmacies only)

_____
NCPDP ID

_____
Other Pharmacy Id Type

_____
Other ID Number

_____
Signature

_____
Printed Name and Title

_____
Date

ACS, Inc.
Attention: MT EDI
PO Box 4936
Helena, MT 59604
or Fax to 406-442-4402

_____
Signature

_____
Printed Name and Title

_____
Date